-> modification of Cal. Plan would be approved ->

insignificantly harmful risk v. significant risk

petition for approval -> submitted notice appear

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Implementation of AB 13
By The California Occupational Safety
And Health Standards Board

Draft

Situation:

Assembly Bill 13, signed by the governor in 1994, bans smoking in workplaces, including bars and restaurants, except in certain locations under specific condition. If implementing regulations are not adopted by the Cal/OSHA Standards Board, all workplace smoking will be banned by January 1, 1997.

BARS
TAVERNS
GAMING
CLUBS

Background:

The Cal/OSHA Standards Board was created by Assembly Bill 150 which was signed by then-Gov. Ronald Reagan in 1973. The Standards Board, while always of a somewhat conservative hue, nevertheless was considerably more "activist" in its early stages than it is today. Across the past four years the Board has become more and more conservative and is reluctant to adopt standards that it views as harmful to California's business climate. For example, after three years of deliberations the Standards Board voted unanimously to not adopt an ergonomics standard for the workplace. Additionally, the Board on at least one occasion refused to adopt regulations mandated by the Legislature.

shewed ergonomics - overstated.

The Standards Board consists of seven part-time members, each appointed by the governor. Two of the members must be chosen from the ranks of labor. At this time one of the labor positions is vacant.

AB 13 - is its legislative mandate

Workplace standards find their way into the body of Cal/OSHA regulations through one of three possible avenues: 1.) By Standards Board initiation; 2.) By petition from an outside organization or individuals including government agencies or, 3.) By mandate in those instances where California has not adopted a standard at least as effective as a federal standard.

AT x level ETS no insignificant harmful effect

OSHA

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The standard which the Board must adopt if any workplace smoking is to be allowed after Jan. 1, 1977 is, by definition, an indoor air quality standard (IAQS). In the Summer of 1994, the Standards Board asked the Division of Occupational Safety and Health to convene an "advisory committee" on indoor air quality. This advisory committee has met approximately three times since its inception but has not recommended to the Standards Board any specific proposals. The Advisory Committee has not met since the governor signed AB 13. The Division and the members of the Committee felt that AB 13 dealt with a substantial number of the issues they were considering, principally smoking in the workplace. The Committee members during their initial meetings were divided between initiating an action and waiting to see what the U.S. Department of Labor promulgates in the way of an IAQ standard.

Complicating the situation in California is the attempt by the Air Resources Board (ARB) to move into the IAQ arena. Attempts by the ARB to regulate ETS indoors were beaten back in 1989, but in other areas some success has been seen. For example, indoor use of formaldehyde and volatile organic compound (VOCs) have been regulated. The ARB has added ETS to its list of "toxic air contaminants" and last Fall an attempt by the Board's Scientific Review Panel (SRP) to force development of a regulation fell short of the mark. The issue can be resurrected at any time in the future.

Proposed Strategy:

The principal public sector players in the development of AB 13 regulations would be the Secretary for Industrial Relations, the chief of the Division of Occupational Safety and Health, the deputy chiefs for health and safety, the chairman and members of the Standards Board and the executive officer of the Standards Board. On some "hot button" issues the Governor's Office becomes involved.

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WRONG - Other than ergonomics

With the Standards Board, cost/benefit is a major consideration in the development and adoption of any workplace regulation. An IAQ regulation based on engineering controls will have considerable impact on California industry but, on the other hand, source control regulations will be even worse. At the present time the ARB, as it makes intrusions into the regulation of IAQ, is of greater threat to industry than the Standards Board because it is relying almost solely on source control to prevent indoor pollutants from reaching the ambient air. With more than 200 elements or compounds on the toxic air contaminants list, substances critical to a host of manufacturing processes could be, as a practical matter, banned from use. Engineering controls could quickly become the preferred method of control, not just for manufacturers but for building owners who lease to manufacturers or service industries with emission problems.

Specific Actions:

The following must be accomplished:

1.) As an initial step a petition should be drafted for presentation to the Standards Board. The Standards Board has a liberal interpretation of what constitutes a petition. It can be as simple as a hand-written note on the back of an envelope, an oral request at a regularly scheduled Board meeting or a detailed polemic covering all aspects of the issue. In this instance a draft standard should be attached to the petition. Technical documentation such as engineering studies is appreciated by the Board. The California Sheet Metal and Air Conditioning Contractors National Association is working with a draft they feel is appropriate for the job at hand. However, it would be in the best interests of the industry to prepare a draft standard to be included with the petition documents. That standard should be drafted keeping in mind the specific needs of the workplaces (restaurants, bars, gaming operations, hotel and motel rooms, etc.) where smoking would be allowed if AB 13 regulations are adopted.

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When a petition is received the Standards Board is required to take an action within six months. The Board assigns a control number and refers the petition to the Division of Occupational Safety and Health for evaluation. After consulting with the Division, Board staff prepares a proposed decision for Board consideration.

The Board frequently grants a petition to the extent that an advisory committee consisting of labor, management and individuals knowledgeable on the subject is formed. In this case, an IAQ Advisory Committee already exists (although it is inactive) and it is quite possible the petition will be referred to that forum. Members of this advisory committee represent such industries, organizations and government agencies as the Building Owners and Managers Association, the Air Resources Board, the Office of Environmental Health Hazard Assessment, the HVAC industry, etc. Committee meetings are open to all who wish to attend. Those attending are invited to participate in the deliberations of the committee as though they were members. The advisory committee either makes recommendations on the content of the regulation or recommends that the proposed standard not be developed. Participation in the advisory committee process would be essential. Any proposed standard submitted by a petitioner is just a starting point. Staffers at the Division of Occupational Safety and Health, the Standards Board and the members of the IAQ Advisory Committee, if the petition is sent there, will either recommend rejection or propose detailed and perhaps fatal amendments. A brief outline of the petition process is attached.

2.) Communication, both written and oral, must be established with the members of the Board and its principal staff. The Board consists of seven members appointed by the governor. Two of the members represent management; two represent labor, although one labor seat is vacant; one member represents the public at large, one represents the occupational health field and one the occupational safety field. A list of the members is attached.

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Because of the Division's hostility to workplace smoking the members of the Board must hear the same arguments presented to the Advisory Committee. The members of the Board must make the ultimate decision and that decision should not be allowed to be based upon the recommendations of the Division and a Division-dominated Advisory Committee. The chief of the Division feels outright that no standard should be developed. He feels that establishing a "permissive exposure level" (PEL), mandated by AB 13 if workplace smoking is to be allowed after Jan. 1, 1997, is next to impossible. No such PEL presently exists. If California were to pioneer such a PEL it may have national consequences.

However, the ultimate responsibility for adopting, or refusing to adopt, any standard rests with the Standards Board and the Board has jealously protected its autonomy over the years. The Board has adopted many standards opposed by the Division and has refused to adopt many standards supported by the Division. The Board has even refused to adopt standards mandated by legislation. That is part of the reason why AB 13 is written the way it is. If the Standards Board refuses to act, all workplace smoking is banned, and refusing to consider proposed regulations is much easier than becoming involved in a series of high-profile hearings on a sensitive issue.

3.) Economic impact arguments must be perfected. Petitioners must be able to show that inactivity on the Board's part -- failure to adopt standards-- will have an adverse effect on the California economy. These arguments must be based upon impacts on the food, beverage, lodging and tobacco retailing industries. The industries impacted should the Standards Board fail to adopt regulations are in the best position to know what will happen in that event. There is history on the subject. These arguments should be developed as part of the grass roots campaign find their way to the members of the Board through the coalition's lobbyist and through the affected industries themselves. Additionally,

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the proposed standard cannot pre-empt employer options. The decision on whether or not to allow workplace smoking must be left with the employer. Unlike an overall IAQ standard, which would be mandatory, the proposed AB 13 standard must leave the ultimate decision with employers.

4.) From a health standpoint, arguments to be developed must include the fact that employees who fear exposure to ETS will be protected by the proposed standard to at least the same level as they are protected by AB 13. AB 13 allows employee exposure in certain locations such as hotel lobbies and hotel and motel rooms. The bill presumes there is a safe level of exposure but does not state what that level is or should be. Technology exists that can clean indoor air to a higher degree of purity than the ambient air. The manufacturers of such equipment (Honeywell, CosaTron, etc.) should be anxious to assist in the development of a proposed PEL because of the potential impact it could have on sales. AB 13 can be interpreted to conclude that a PEL is possible.

5.) It must be made clear to the Department of Industrial Relations, Cal/OSHA and the employer community that failure to act will open the door to regulation by the ARB. Regulation of IAQ in the workplace is delegated to Cal/OSHA by statute and the best way for Cal/OSHA to protect its turf is to take charge of indoor air quality in an affirmative way. If Cal/OSHA does not demonstrate that it is in charge, the ARB will fill the void. Industries that oppose the proposed AB 13 regulations would face a dilemma. Few, if any, would want the Air Resources Board establishing workplace IAQ standards in California, particularly since the ARB relies heavily on source controls. These arguments must be made in convincing fashion by the coalition lobbyist and by the affected industries in their communications with the Department, the Division and the Board.

6.) A grass roots effort must be planned. Affected companies and interested individuals should be used to write letters and make phone calls to

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officials involved in the standard-setting process, particularly the members of the Standards Board. These contacts should come from as many affected industries as possible to emphasize the economic consequences of failing to adopt a standard. Elements of the grass-roots program should be worked out with the Dolphin Group, as should an expanded program designed to influence the Governor's Office, legislators and the media.

In summation, convincing the Department of Industrial Relations, Cal/OSHA and the Standards Board that adopting AB 13 standards is the best course of action for the state will, at best, be difficult. But the Standards Board will not act on its own. If a petition is not filed smoking in the workplace will cease to be a permissible activity within two years.

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